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# Testimony

**of Chris Moore**

Senior Director

International Business Policy

National Association of Manufacturers

*before the* House Judiciary Committee

Subcommittee on Courts, Intellectual Property and the Internet

*on* "Trade Secrets: Promoting and Protecting American Innovation,  
Competitiveness and Market Access in Foreign Markets"

June 24, 2014



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**“TRADE SECRETS: PROMOTING AND PROTECTING AMERICAN INNOVATION,  
COMPETITIVENESS AND MARKET ACCESS IN FOREIGN MARKETS”**

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ON COURTS, INTELLECTUAL PROPERTY AND THE INTERNET**

Chairman Coble, Ranking Member Nadler and members of the Subcommittee on Courts, Intellectual Property and the Internet, thank you for your focus on the protection of trade secrets and for the opportunity to testify today.

My name is Chris Moore, and I am the Senior Director for International Business Policy at the National Association of Manufacturers (NAM). The NAM ([www.nam.org](http://www.nam.org)) is the largest industrial trade association in the United States, representing more than 12,000 manufacturers in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributed more than \$2.08 trillion to the U.S. economy in 2013 and accounts for two-thirds of private sector research and development.

Today, trade secrets are more important than ever to manufacturers small and large. These vital intangible assets include everything from proprietary manufacturing plans, processes, techniques, codes and formulas to research, marketing data and customer lists. The trade secrets of publicly traded U.S.

companies alone are worth an estimated \$5 trillion. The trade secrets of privately held firms surely add much more to the total.

Trade secrets are acquired and developed at significant cost and through many years of company experience and investment. They provide a powerful business advantage in highly competitive sectors like manufacturing – but only as long as they remain confidential. Trade secrets are not exclusive rights. Once disclosed, their value is lost forever. Theft has a real, measurable, real-world impact. It costs good-paying U.S. jobs and can even put entire businesses at risk.

Trade secrets are particularly important for small and medium-sized businesses that account for the vast majority of NAM members. For many of these firms, trade secrets are their intellectual property. They rely on trade secrets to protect their innovations, often because they are less expensive to retain and enforce than patents. They leverage the expertise of their employees to manufacture custom products that meet specific customer performance requirements through proprietary processes.

That's why addressing the serious and growing threat of trade secrets theft is so essential. The trade secrets on which many small and medium-sized businesses rely are increasingly at risk in today's mobile and interconnected global marketplace. Estimates of losses from trade secrets theft range from one to three percent of GDP in the United States and other advanced developed economies.<sup>1</sup> The head of the National Security Agency believes theft costs American companies \$250 billion per year.<sup>2</sup>

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<sup>1</sup> Center for Responsible Enterprise and Trade and PWC, [“Economic Impact of Trade Secret Theft: A framework for companies to safeguard trade secrets and mitigate potential threats,”](#) February 2014.

<sup>2</sup> Josh Rogin, [“NSA Chief: Cybercrime Constitutes the ‘Greatest Transfer of Wealth in History,’”](#) *Foreign Policy*, July 9, 2012.

In our parents' or grandparents' day, trade secrets often were stolen by individual employees acting alone. They took paper documents and sold them to competitors across town. Now, trade secrets are digital and vulnerable to anonymous hackers operating as part of criminal enterprises. Proprietary information that might once have taken a moving truck to transport can walk out the door on a thumb drive and be sold to competitors half a world away.

Manufacturers small and large are doing everything they can to harden their networks and safeguard their trade secrets. They protect their trade secrets through non-disclosure contracts, technological security measures and other means. They educate their employees about the importance of protecting proprietary information and the potential business impact if trade secrets are stolen or disclosed. Those measures are costly, but unfortunately all too necessary.

But there is only so much individual businesses can do alone. Congress and the Administration have critical roles to play in ensuring America's laws and policies are equal to today's threats. The good news is that Washington is recognizing the problem. Congress has introduced and passed legislation that is helping to upgrade our nation's laws for the 21<sup>st</sup> century.<sup>3</sup> The White House has organized federal agencies behind a strategy to mitigate trade secret theft.<sup>4</sup>

Those are critical steps, but they're not enough. We need to step up our game. We need to ensure federal law keeps pace with technological changes that increasingly enable trade secret theft. That's why the NAM supports measures that enhance trade secret protection, raise the stakes for criminals and enable businesses to better protect and enforce their rights, including legislation

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<sup>3</sup> See, for example, the [Foreign and Economic Espionage Penalty Enforcement Act](#), which was passed by Congress and was signed into law on January 14, 2013.

<sup>4</sup> Office of the Intellectual Property Enforcement Coordinator, ["Administration Strategy on Mitigating the Theft of U.S. Trade Secrets,"](#) February 2013.

that would provide access to federal civil enforcement of trade secret misappropriation.

Access to federal court is critical for businesses of all kinds. State civil trade secret laws alone often are not sufficient to deter and remedy interstate theft. State courts are not always well suited to working quickly across state and national boundaries to facilitate discovery, serve defendants or witnesses, or prevent a party from leaving the country. State laws can vary, making it harder for firms to craft consistent policies.

When a trade secret is stolen, its owner must act quickly to protect proprietary information and preserve evidence. Without access to federal courts, thieves have the advantage. As an NAM Board member and small business owner testified before the Senate Judiciary Committee last month: “there are at least six airports with international flights within a two-hour drive from my facility. Five of those airports are in other states. By the time multiple state courts take action, the criminals will be long gone.”<sup>5</sup>

Beyond any delays, taking civil action to protect trade secrets across multiple jurisdictions is also difficult and costly, particularly for small businesses. Unless small businesses have legal firms on retainer in different states, which most do not have, they effectively are barred from using a key tool to defend their rights. That needs to change, and the NAM urges the Judiciary Committee to support legislation providing access to federal courts for trade secret theft.

The fact that trade secret owners do not have the same access to federal civil enforcement as owners of every other form of intellectual property right – including patents, trademarks and copyrights – leaves them without an essential means to deter theft and recover any losses. It also makes it harder for the

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<sup>5</sup> [Testimony of Drew Greenblatt](#), President and Owner of Marlin Steel Wire Products, before the Senate Judiciary Committee, Subcommittee on Crime and Terrorism, May 13, 2014.

United States to lead internationally and to work with our overseas partners to improve trade secret protection and enforcement around the world.

Trade secret theft is increasingly global in scope.<sup>6</sup> As the NAM highlighted in its written comments for the Office of the U.S. Trade Representative's 2014 Special 301 Report: "[t]rade secret protection and enforcement is still inadequate or non-existent in many countries and regions, putting industrial know-how and technology at risk and making it harder for U.S. companies to trade, do business and collaborate with local partners and suppliers in countries around the world."

The United States must meet the global challenge of trade secrets theft with global solutions. With access to federal civil enforcement, along with effective criminal protection of trade secrets already provided for under the Economic Espionage Act, there are concrete opportunities to strengthen protection and enforcement abroad.

Trade secrets are already on the table in ongoing Transatlantic Trade and Investment Partnership (T-TIP) and Trans-Pacific Partnership (TPP) negotiations and the NAM is seeking outcomes that will provide improved protection U.S. trade secrets in foreign markets. To ensure strong outcomes on trade secrets and other issues in these and other negotiations, it is also vital that Congress act soon to pass trade promotion authority, the Congressional-Executive framework that empowers Congress to set negotiating objectives, requires the Administration to consult with Congress and other stakeholders before, during and at the conclusion of the negotiations, and provides for Congressional consideration of the final agreement. The Congressional Bipartisan Trade Priorities Act of 2014 (H.R. 3830),<sup>7</sup> introduced by Ways and Means Chairman Camp and Senate leaders, is a well-crafted bill that would ensure stronger and

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<sup>6</sup> See, for example, Office of the National Counterintelligence Executive, ["Foreign Spies Stealing U.S. Economic Secrets in Cyberspace,"](#) October 2011; and Defense Security Service, ["Targeting U.S. Technologies: A Trend Analysis of Cleared Industry Reporting,"](#) 2013.

<sup>7</sup> The NAM submitted these comments on this legislation found [here](#).

better outcomes in TPP and T-TIP trade negotiations if this legislation can be moved quickly toward passage.

Through trade agreement negotiations and through ongoing engagement in bilateral and multilateral forums, the United States can make common cause with Europe, Japan and others around the world that are facing the same challenges and beginning to pursue their own solutions. Our partners have a shared stake in the success of that endeavor. They should be eager to work with us and to contribute ideas and solutions from their own experience. To achieve these results, U.S. leadership is essential.

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Chairman Coble, Ranking Member Nadler and members of the Subcommittee, trade secrets are vital for manufacturers small and large. America's trade secrets laws and policies much keep pace with today's threats. Manufacturers need your help to ensure they can effectively and efficiently protect and enforce their trade secrets.

The NAM applauds your attention to this critical challenge and your interest in solutions. With strong global partnerships and with improvements to U.S. laws, including access to federal civil enforcement, we can have a real impact at home and abroad.

Thank you for the opportunity to testify this afternoon. I look forward to answering any questions you may have.